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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL EDWARD ROSS

Appeal 2009-011894
Application 10/771,645
Technology Center 3700

Before JENNIFER D. BAHR, JOHN C. KERINS, and STEVEN D.A.
McCARTHY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Edward Ross (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-5. Specifically, the Examiner has rejected claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Schwartz (US 2,398,257, iss. Apr. 9, 1946), and has rejected claims 3-5 under 35 U.S.C. § 103(a) as being unpatentable over Schwartz. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to a package with a removable label. *See* Spec. 2:12-22.

Claim 1, reproduced below, is representative of the claimed subject matter.

1. A package comprising:
 - a) a chamber defined by at least one wall containing graphics;
 - b) a label removably affixed directly to said wall and said graphics, said label being partially translucent so that a portion of said wall is visible underneath said label, said label and said wall contains graphics which complement each other, wherein said label contains graphics which form a first part of a scene and said wall contains graphics which form a second part of said scene which underlies the first part of said scene; and
 - c) wherein said wall and said graphics adhered to said wall remain intact when said label is removed.

SUMMARY OF DECISION

We AFFIRM.

ISSUE

Do the picture of the movable object (e.g., dog 3) and surrounding marginal short dark lines 6 printed on wrapper 2 of package 1 and the lines 5 printed on band 4, respectively, of Schwartz satisfy the limitations in claim 1 of the graphics of the wall and the graphics of the label which “complement each other,” as called for in Appellant’s claim 1? *See* Ans. 3-4; App. Br. 5-6. In other words, are the lines 5 of Schwartz “graphics,” and do they complement the graphics (picture of dog 3 and marginal lines 6) underlying the band 4? *See* App. Br. 5.

DISCUSSION

We agree with the Examiner that the lines 5 of Schwartz’s band 4 are “graphics” and that they complement the graphics (picture of dog 3 with surrounding marginal lines 6) on wrapper 2 underlying the band 4. *See* Ans. 4.

Schwartz describes a package 1, which may be a can, jar, or bottle, with a printed wrapper 2 having a picture of a movable object, such as a dog 3 or lettering, and short marginal lines 6 about the object, thereon, and a transparent band 4 wrapped around the package. Schwartz, p. 1, col. 2, ll. 3-12, 16-17, 24-25. Schwartz’s band 4 is ruled or printed with vertical, spaced, dark lines 5 adapted to cooperate with the short marginal dark lines 6 so that as the band 4 is moved slightly back and forth, the movable object (dog 3 or other object, or lettering) will appear to be animated. *Id.*, ll. 14-26.

The Examiner has construed the term “graphics” in accordance with what the Examiner characterizes as “the universally accepted definition of graphics.” Ans. 4. Appellant has not disputed that definition, but asserts

that a skilled person would understand the term “graphics” as used in Appellant’s Specification means “informative label graphics representing indicia of an attractive design.” App. Br. 5-6.

Appellant’s Specification does not provide a lexicographic definition of “graphics,” or otherwise indicate that this term is used in a manner other than its ordinary and customary meaning, i.e., the universally accepted meaning as asserted by the Examiner and not disputed by Appellant. While Appellant’s Specification describes an illustration of a tree as one example of “graphics,” or “a pleasant graphic design,” on the lower label (Spec. 4:13-20), the Specification does not in any way restrict the form or content of the graphics so as to narrow the scope of the term “graphics.” Additionally, without further limitation, Appellant’s Specification describes a preferred embodiment in which the graphics on the upper label and lower label may form first and second parts of a scene. *See* Spec. 6:14-19. Accordingly, the Examiner’s reading of the “graphics” of the label in claim 1 on the lines 5 of Schwartz’s band 4 is based on a reasonable construction of the term “graphics” in light of Appellant’s Specification.

The lines 5 on Schwartz’s band 4 complement the picture (the dog 3 or other object or lettering and marginal lines 6) on the wrapper 2 by making the dog, other object, or lettering appear to be animated when the band is moved relative to the wrapper. By cooperating with the marginal lines 6 to make the object (or lettering) on the wrapper 2 appear to be animated, the lines 5 and the picture and surrounding marginal lines complement one another such that the lines 5 form a first part of the scene and the underlying picture and surrounding marginal lines form a second part of the scene.

Thus, we find that the lines 5 and the picture and surrounding marginal lines complement one another as called for in claim 1.

For the above reasons, Appellant's arguments do not persuade us that the Examiner erred in finding that Schwartz anticipates the subject matter of claim 1. We sustain the rejection of claim 1 and of claim 2, which Appellant has grouped with claim 1. *See* App. Br. 5; 37 C.F.R. § 41.37(c)(1)(vii).

In contesting the rejection of claims 3-5 as being unpatentable over Schwartz, Appellant merely relies on the arguments presented for claim 1. For the reasons discussed above, these arguments do not persuade us that the Examiner's rejection of claims 3-5 should be reversed. We sustain the rejection.

DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2009-011894
Application 10/771,645

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